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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 07 2010

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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

MDeadrick

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a clinical researcher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Bachelor of Medicine and Surgery from Gujarat University in India and a Master of Public Health from Tulane University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary

merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, neurology. The director then addressed whether the proposed benefits of the petitioner's work would be national in scope. The majority of the petitioner's duties are as a practicing physician and administrative duties as a Chief Neurology Resident. The director concluded that the benefit of these duties would not be national in scope. The director did acknowledge that the petitioner also performs research and that this research has the potential for benefits that are national in scope. Notably, however, the petitioner had been offered a one-year Stroke Fellowship (residency, according the employment agreement in the record). None of the job duties for this position include research.

On appeal, counsel asserts that the petitioner has acted as a consultant to scientific institutions and will likely continue his work as a consultant rather than work for any one traditional employer. Specifically, counsel speculates that the petitioner "may" obtain independent research grants from

sources other than his employer and "may" act as a consultant to a number of medical research institutions. As evidence that the petitioner is already beginning to act in this manner, counsel notes that the petitioner has been invited to write editorials for highly ranked journals. Counsel is not persuasive. Research is not part of the petitioner's one-year Stroke Fellowship employment agreement. Similarly, the petitioner has no documented experience working as a hired consultant for multiple institutions. The fact that, after the date of filing, he has been invited to write editorials for journals does not suggest that he could secure employment as an independent contractor for multiple institutions rather than working primarily as a practicing physician. Simply conceiving a manner in which the petitioner could convert his skills to serve the national interest at the national level does not convert an occupation whose benefits are primarily local to an occupation whose benefits are typically national in scope.

NYSDOT, 22 I&N Dec. at 217, n.3 provides:

> [T]he analysis we follow in "national interest" cases under section 203(b)(2)(B) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A) of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. We concur with the director that while health care is in the national interest, the impact of a single physician is too attenuated at the national level.[1] In light of the above, we will only consider the petitioner's past record and future potential as a researcher rather than as a physician.

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[1] Congress is presumed to be aware of existing administrative and judicial interpretations of statute when it reenacts a statute. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978). In this instance, Congress' awareness of *Matter of New York State Dept. of Transportation* is a matter not of presumption, but of demonstrable fact. In 1999, Congress amended section 203(b)(2) of the Act in direct response to the 1998 precedent decision by including a separate waiver for physicians operating in an underserved area. The petitioner in this matter does not seek a waiver as a physician in an underserved area. When reenacting the statute in 1999, Congress could have taken any number of actions to limit, modify, or completely reverse the precedent decision. Instead, Congress let the decision stand, apart from a limited exception for certain physicians willing to work in an underserved area, as described in section 203(b)(2)(B)(ii) of the Act. Because Congress has made no further statutory changes in the decade since *Matter of New York State Dept. of Transportation*, we can presume that Congress has no further objection to the precedent decision, including the requirement that the proposed benefits must be national in scope.

It remains, then, to determine whether the petitioner's research will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted evidence of various achievements and recognition. Specifically, the petitioner submitted evidence of his membership in the Eta Chapter of the Delta Omega Society, Sigma Xi, the New York Academy of Sciences and the American College of Physicians (ACP). The record reveals that the Delta Omega Society and Sigma Xi are honor societies. According to materials submitted by the petitioner, membership in the Delta Omega Society requires evidence of scholarship in students, teaching or research in faculty. According to other materials submitted by the petitioner, membership in Sigma Xi requires a "noteworthy achievement" as evidenced by publications, patents, written reports or a thesis or dissertation. In addition, the petitioner received a letter from ACP advising that his election to fellowship had been "almost finalized." The letter includes the following disclaimer: "You are receiving this message as a benefit of your ACP membership." The materials submitted from the ACP website indicate that fellowship can be from advancement from regular membership. Even if we were to conclude that these memberships are indicative of a degree of expertise significantly above that ordinarily encountered, evidence of such memberships fall under one criterion for establishing eligibility as an alien of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(E). This classification, however, normally requires an approved alien employment certification. We cannot conclude that meeting one criterion or even the requisite three criteria for that classification warrants a waiver of the alien employment certification requirement. *Id.* at 218, 222.

Similarly, the petitioner received (1) an honorable mention for the 2007 resident's award issued by the Angioma Alliance, (2) an invitation to the American Neurological Association's Presidents' Award Symposium in 2008, (3) a letter from the Association of Indian Neurologists in America (AINA) confirming his selection for Best Research Presented by an Indian Neurologist at the American Academy of Neurology Meeting, (4) a certificate of completed educational activity towards an American Medical

Association Physician's Recognition Award, (5) Resident of the Year recognition from St. Barnabas Hospital, (6) a First Place finish at the 2008 Michigan Mind Matters and (7) 2007 and 2008 Clinical Excellence Awards from Michigan State University. The Angioma Alliance award was limited to residents, who are completing their training. The petitioner did not establish the significance of the invitation to an award symposium. Education credit towards a recognition award appears based on course completion rather than demonstrated impact in the field. The AINA recognition appears to be limited to neurologists from one foreign country working in the United States. The Michigan Mind Matters appears to be a purely local event. Finally, recognition from the petitioner's own employer, Michigan State University, cannot establish the petitioner's influence beyond that institution. Significantly, the recognition was for clinical excellence rather than the completion of influential research. Regardless, as with memberships, recognition from peers and organizations is one criterion for aliens of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(F). As stated above, that classification normally requires an approved alien employment certification, which we will not waive simply because an alien meets two criteria or even the requisite three criteria. *NYSDOT,* 22 I&N Dec. at 218, 222.

The petitioner also submitted evidence that he served on a Michigan State University panel to evaluate potential new hires and served as a peer reviewer, including as one of hundreds of peer reviewers for *Stroke*. Specifically, the list of reviewers includes 396 names just within the first three letters of the alphabet, the portion of the list provided by the petitioner. We are not persuaded that serving on an internal panel evaluating potential new hires for his employer demonstrates the petitioner's influence beyond his employer. Moreover, the petitioner has not demonstrated that serving as one of hundreds, possibly thousands, of reviewers of this journal sets him apart from other clinical researchers in his field. The record also reveals that the petitioner has founded a new journal, *Neurohospitalist*. We do not question that this journal has the potential to influence the field. The record, however, contains no evidence that this journal has yet to publish a single issue, let along establish its reputation. Thus, this evidence suggests that the petition was at best filed prematurely, before the petitioner's journal could publish any issues and establish a reputation.

The record also includes an undated invitation to submit an editorial to *US Neurology* for a 2009 issue and a March 3, 2009 letter from the editor of *Nature Clinical Practice Neurology,* [redacted], advising that the petitioner had been invited to submit an editorial for an upcoming issue of that journal. [redacted] asserts that only experts are invited to contribute editorials. She does not, however, explain how selections are made or provide the number of invitations extended annually. Both invitations postdate the filing of the appeal and cannot be considered evidence of the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Regardless, while the invitations suggest that the petitioner may be gaining some recognition in the field, for the reasons discussed above and below, the evidence does not establish his influence on the field as a whole.

The record also contains evidence that the petitioner appeared in *Who's Who in America.* The petitioner did not submit evidence to establish the significance of his inclusion as one of hundreds of other individuals in this directory. Without evidence that this publication is more significant than a for-profit vanity press

that permits self-nomination, we cannot conclude that this evidence demonstrates the petitioner's influence in the field.

The petitioner has published several case studies and presented his work at conferences. While the petitioner's references attest to the significance of the journals and conferences, we will not presume the influence of a given article or presentation from the journal or conference. Rather, it is the petitioner's burden to establish the significance of an individual article or presentation. In response to the director's request for additional evidence, the petitioner submitted evidence that two of his articles had been cited once each and requests for reprints of a third article. This evidence does not demonstrate that the petitioner's articles have been influential. The petitioner also submitted evidence that a press release of his survey on the use of tissue plasminogen activator (tPA) for stroke victims was widely reproduced on health websites. The stories clearly result from between one and three press releases as the language in all of these reports is identical to one of three formats.

First, while the petitioner indicates that he began the research one month prior to the date of filing, it remains that it was not presented until after the petition was filed. As stated above, the petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. In this matter, that means that he must demonstrate his track record of success with some degree of influence on the field as a whole as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. at 49; *see also Matter of Izummi,* 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his as of yet unpublished research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008). As this research had not been disseminated as of the date of filing, it cannot demonstrate the petitioner's influence in the field as of that date.

In addition, [redacted], a professor at Wayne State University in Michigan, explains that this research resulted from pooling the results of 18 studies published between 1995 and 2008 to determine that women are 30 percent less likely to receive tPA. [redacted] does not explain how pooling the results of previous studies demonstrates the petitioner's neurological expertise rather than a basic use of statistics. Any future filing would need to elaborate on how the petitioner's expertise as a neurologist contributed to these findings.

The remaining evidence consists of reference letters. The initial letters were all from the petitioner's colleagues at Michigan State University. In response to the director's request for additional evidence, the petitioner submitted more independent letters. We will consider those letters below. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions

statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of vague contributions to the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

[redacted] of the Department of Neurology and Ophthalmology at Michigan State University, asserts that the petitioner obtained nearly perfect scores during his medical education. Academic performance, however, as measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *NYSDOT*, 22 I&N Dec. at 219, n.6. [redacted] then discusses the petitioner's recognition as a resident, discussed above. As stated above, however, this recognition may relate to one of the criteria for aliens of exceptional ability but does not necessarily demonstrate the petitioner's eligibility for a waiver of the alien employment certification process.

Finally, [redacted] characterizes the petitioner as an "emerging leader," and an "outstanding clinical scientist" with "considerable expertise at the highest level" relating to cerebral vascular disease. While [redacted] notes that the petitioner has presented his work, however, he does not provide examples of how the petitioner's clinical research has influenced the field. Similarly, [redacted] of the Cerebrovascular Disease Division at Michigan State University, simply lists the evidence addressed above without explaining how the field has been influenced by the petitioner's research.

at Michigan State University, also praises the petitioner's academic grades and examination scores. As stated above, however, academic performance is insufficient. *Id.* Regarding the petitioner's specific research accomplishments, [redacted] provides:

> One of [the petitioner's] topics is the elevated levels of C-reactive protein and his research suggests that the high levels of C-reactive protein *may* be predictive of intimal hyperplasia and help physicians pick appropriate candidates for the stinting. He has

> also done excellent research in the lab on rodents, which help to correlate the impact of ischemic stroke on cardiac function. This model of function *may* allow better study of cardiac abnormalities in patients who have stroke. He has submitted a paper and is the first author on lower pretreatment cerebral blood volume increases the hemorrhage risks after interarterial revascularization in acute stroke. This work *has the potential* to change the approach of hydrating patients prior to endovascular revascularization.

(Emphasis added.) The above language is highly speculative and does not suggest that independent physicians are already using the petitioner's work to chose the appropriate stinting candidate, that independent researchers are using his rodent models to study cardiac abnormalities in stroke victims or that independent hospitals have altered their policy on hydrating patients prior to revascularization based on his work. Similarly, [redacted] a professor at Michigan State University, characterizes the above studies as "cutting edge" but fails to explain how the field has already been influenced by these studies.

[redacted] of Neuroendovascular Services at Michigan State University and Director of the Vascular Neurology Fellowship Program at the Cleveland Clinic, asserts that the petitioner "has exceptional training in both internal medicine and neurology allowing him to become one of the handfuls of physicians who will have these skill sets, as he becomes a vascular neurologist and Neurocritical care specialist." It cannot suffice, however, to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

Regarding the petitioner's specific research project, [redacted] speculates that the petitioner's "line of research will help vascular neurologists and endovascular specialist to better identify patients most likely to benefit from aggressive treatment paradigms in the setting of an acute ischemic stroke." [redacted] does not suggest that any hospital has issued new guidelines based on this research or otherwise explain how it has already influenced the field. Regarding the petitioner's work on C-reactive proteins, [redacted] concludes that the data from this work "can be used for randomized controlled studies involving stent placement in intracranial vasculature" but does not identify any independent institution performing such studies based on the petitioner's data.

[redacted] of Epidemiology at Michigan State University, asserts that he worked on two projects with the petitioner, one of which was not presented until after the date of filing. The first project was a review article of mini-stroke care. While [redacted] praises the petitioner's ability to complete part of this project independently and notes that it was presented, he does not explain how this study has influenced the treatment of mini-stroke patients at the national level.

[redacted] concludes:

> His background training in clinical stroke care, internal medicine expertise as well as public health (MPH from Tulane University) puts him in a unique position since there are very few clinical neurologists that can bridge these three important areas.

As stated above, however, it cannot suffice, however, to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

While the petitioner submitted letters from more independent references in response to the director's request for additional evidence, they mostly discuss accomplishments that had yet to prove influential as of the date of filing, the date as of which the petitioner must establish his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. [redacted] of Neurosciences ICU at the Mayo Clinic, Florida, discusses the petitioner's participation in the **founding of *Neurohospitalist.*** [redacted] explains that the petitioner negotiated contracts and assembled an editorial board consisting of national and international experts in Neurohospitalist Medicine from several prestigious institutions. [redacted] further states, however, that the first issue of the journal was not due out until fall 2009. On appeal, the petitioner submits no evidence that the journal actually published an issue. As this journal had yet to publish a single issue as of the date of filing or even as of the appeal date, the record does not establish the significance of the petitioner's participation in the founding of this journal.

asserts that the petitioner "evaluated and developed a new protocol for using novel imaging of the brain known as CT Perfusion in patients receiving invasive stroke treatment." [redacted] continues that the petitioner "found that patients with certain imaging parameters were more likely to have hemorrhage after having catheter based intervention treatment of stroke." While [redacted] notes that this research was presented one month before the petition was filed, he does not explain how this research has influenced the field. For example, he does not identify hospitals that have adopted the petitioner's protocol. [redacted] then discusses the petitioner's analysis of data on more than 21,000 stroke patients, resulting in the conclusion that men are 30 percent more likely to receive tPA than women. As discussed above, however, this research was completed and presented after the date of filing. Thus, this research cannot establish the petitioner's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

[redacted] of the Stroke Program at Evergreen Hospital Medical Center in Kirkland, Washington, asserts that the petitioner is one of the pioneers of Neurohospitalist medicine, a rapidly growing field that is having and will have a significant impact on health care in our nation. Such care, according to [redacted], is "ideally provided by physicians trained both in Neurology and Internal medicine or Neurologists interested in inpatient medicine." [redacted] asserts that the petitioner is among the three to five percent of neurologists dually trained in both internal medicine and neurology. As stated

above, however, it cannot suffice, however, to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

The remaining letters are similar to those discussed above. The record shows that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. It can be argued, however, that most clinical research, in order to be accepted for publication or presentation, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher who performs original clinical research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.